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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/604,995	06/28/2000	Cory O. Nykoluk	16513-2424	6151

21888 7590 09/25/2002

THOMPSON COBURN, LLP  
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ST LOUIS, MO 63101

EXAMINER

MAI, TRI M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

CC

# Office Action Summary

Application No.

09/604,995

Applicant(s)

NYKOLUK, CORY O.

Examiner

Tri M. Mai

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. Claims 2-9, 12, 13, 14, and 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 7 and 14, the claims are incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The claims recite the rigid towing member connected to the base for pivoting movement. However, there is no structure recited to enable the rigid towing member pivoting with the base. Applicant is required to state what element is required to enable such pivoting movement.

Claim 16 is also incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The claims recite the backing sheet being twistable with the rigid base. However, there is no structure recited to enable backing sheet being twistable with the rigid base.

Claims 8 and 13 are confusing. The claims recite that the backing sheet to pivot about the towing member. However, it seems that the towing member is attached to the towing member and members 38 and 36 do not pivot about each other. Applicant is required to show where is the pivoting point and how the backing sheet is attached to allow the backing sheet to pivot about the towing member.

In claim 12, it is unclear what is meant by "a side the pack".

***Claim Rejections - 35 USC § 102***

2. Claims 2-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Mao (6,279,706). Mao teaches a piece of baggage having a rigid base 23, two wheels 26, a rigid towing member 30, ball-and-socket joint for connecting the arcuate handle to conform to the user as shown in Fig. 8., and a backing sheet between portions 30 and 20 in Fig. 6.

3. Claims 7, 8, 16, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Bogert (6227339). Bogert teaches a rigid base 142, a rigid towing member, a flexible backing sheet at portion 140. The backing sheet and the base are pivotally attached as shown in Fig. 12, i.e., they pivot with one another.

Regarding claim 16, the flexible material and the backing sheet are twistable (pivotable) as claimed.

4. Claims 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Miyoshi (5908093). Miyoshi teaches a towing handle that extends along an arcuate path curved away from the pack, i.e., away from the top wall.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogert in view of Browning. Bogert meets all claimed limitations except for the single-pole member.

Browning teaches that it is known in the art to provide a single-pole member. It would have

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been obvious to one of ordinary skill in the art to provide a single-pole member in Bogert as taught by Browning to provide an alternative handle.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bogert in view of Miyoshi. Bogert meets all claimed limitations except for the curved handle. Miyoshi teaches that it is known in the art to provide a curved handle. It would have been obvious to one of ordinary skill in the art to provide a curve handle in Bogert as taught by Miyoshi to tow the luggage easily.

### *Response to Arguments*

8. The Declaration filed on 09/23/02 under 37 CFR 1.131 has been considered but is ineffective to overcome the Mao reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Mao reference to either a constructive reduction to practice or an actual reduction to practice. In fact, there is no evidence from a date prior to the date of reduction to practice prior to the filing date of the Mao reference.

Furthermore, the evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Mao reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The evidence fails to show the necessary elements as set forth by the claims and the specification, i.e. elements 38, 48, 74, etc.

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With respect to the rejection over the Miyoshi reference, the amended claims do not read over the Miyoshi reference. As set forth above, Miyoshi teaches a towing handle that extends along an arcuate path curved away from the pack, i.e., away from the top wall.

*Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

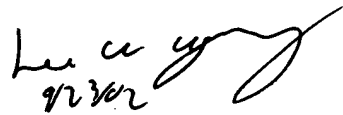
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai  
Examiner  
Art Unit 3727



September 23, 2002



LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700



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Bib Data Sheet

CONFIRMATION NO. 6151

<b>SERIAL NUMBER</b> 09/604,995	<b>FILING DATE</b> 06/28/2000 <b>RULE</b>	<b>CLASS</b> 190	<b>GROUP ART UNIT</b> 3727	<b>ATTORNEY DOCKET NO.</b> 16513-2424
<b>APPLICANTS</b> Cory O. Nykoluk, St Louis, MO;				
** CONTINUING DATA ***** No				
** FOREIGN APPLICATIONS ***** No				
IF REQUIRED, FOREIGN FILING LICENSE GRANTED ** SMALL ENTITY ** ** 09/21/2000				
Foreign Priority claimed 35 USC 119 (a-d) conditions met Verified and Acknowledged	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> Met after Allowance Examiner's Signature <u>T Mcari</u> Initials	<b>STATE OR COUNTRY</b> MO	<b>SHEETS DRAWING</b> 3	<b>TOTAL CLAIMS</b> 20
<b>INDEPENDENT CLAIMS</b> 3				
<b>ADDRESS</b> 21888				
<b>TITLE</b> Towable wheeled-backpack				
<b>FILING FEE RECEIVED</b> 345	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:		<input type="checkbox"/> All Fees <input type="checkbox"/> 1.16 Fees ( Filing ) <input type="checkbox"/> 1.17 Fees ( Processing Ext. of time ) <input type="checkbox"/> 1.18 Fees ( Issue ) <input type="checkbox"/> Other _____ <input type="checkbox"/> Credit	





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Foreign Priority claimed <input type="checkbox"/> yes <input type="checkbox"/> no 35 USC 119 (a-d) conditions <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> Met after met Allowance Verified and Acknowledged Examiner's Signature _____ Initials _____		<b>STATE OR COUNTRY</b> MO	<b>SHEETS DRAWING</b> 3	<b>TOTAL CLAIMS</b> 20	<b>INDEPENDENT CLAIMS</b> 3
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